



March 8, 2006

The Honorable Mike Nofs
State Representative
P.O. Box 30014
Lansing, MI 48909-7514

Dear Representative Nofs:

I write to indicate AARP Michigan's support for House Bill 5811, sponsored by Rep. Bill Huizenga. I understand that you intend to place the bill on the agenda of the House Committee on Energy and Technology on Wednesday, March 15.

The bill amends the Home Solicitation Sales Act to correct an oversight revolving around Public Act 141 of 2000. When PA 141 was passed to create a competitive energy market, no companion measure exempted power suppliers from the telephone sales provisions of the Home Solicitation Sales Act.

In essence, the bill would allow telephone solicitation of and immediate decision by consumers in selection of a natural gas or electric energy supplier. As you have said, competition leads to lower prices, and this bill would allow competitive energy suppliers to reach consumers by telephone.

Note that the act already exempts telephone solicitations by communications providers.

This bill would not, in AARP's estimation, remove any current consumer protections arising out of the Do-Not-Call Act, and would require a confirmation letter within seven days of any agreement and contract. It would also ensure penalty free withdrawal from a contract within 3 days for electric and 30 days for gas and prohibit slamming and cramming.

If you or your staff have any questions, please make contact with me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Knox".

Bill Knox
Associate State Director for Government Affairs
AARP Michigan
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517-267-8917 FAX 517-482-2794

cc: Rep. Huizenga

Ms. Jody Vanderveen

March 13, 2006

Honorable Mike Nofs
Chairman, House Energy and Technology Committee
Lansing, MI. 48909

Dear Chairman Nofs:

I am writing to you on behalf of MXenergy in support of House Bill 5811, which amends the Home Sales Solicitation Act (HSSA) to exempt licensed gas and electric suppliers from the requirement of section 113 of the Act for a written signature from residential customers subject to home sales solicitations.

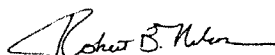
MXenergy is one of the nation's fastest-growing providers of natural gas to consumers. It provides customers a choice of gas suppliers in eleven states and one Canadian province. MXenergy has participated in the Michigan Public Service Commission's Gas Choice program since it was licensed by the Commission in March, 2004. MXenergy is convinced that the Gas Choice program administered by the Commission provides greater protection for consumers than the provisions of the HSSA. As a Commissioner during the development of the Gas Choice Program, I can attest to the thoroughness and integrity of the Commission's program.

The Commission procedures and tariffs, enacted pursuant to Act 634 of 2002, provide for third party verification of the customer's consent to sign up for service with an alternative supplier and for a 30 day cancellation period for consumers, which is ten times the amount of time allowed by the HSSA. Moreover, alternative gas suppliers, under the Commission's program are subject to substantial penalties for slamming, cramming, and deceptive marketing practices.

MXenergy believes that HB 5811 will codify the existing Gas Choice program of the Commission and permit the continuation of competitive choice to millions of Michigan ratepayers concerned about the volatility of natural gas prices.

Sincerely,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.



Robert B. Nelson
Counsel for MXenergy

LEGAL AND ADMINISTRATIVE REGULATIONS
ALTERNATIVE ELECTRIC SUPPLIERS

Licensing Procedure (*Commission Order U-11915 adopted pursuant to MCL 460.10a(2) and MCL 460.10q*)

- ☐ The following must be provided or shown as part of an alternative electric supplier's application:
 - Maintain an office in the state
 - Entity has the necessary financial, managerial, and technical capabilities (includes up to 3 years of financial records, resumes of key managers, and other documents to show the required capabilities)
 - Maintain records the commission considers necessary
 - Information on the applicant's safety record and history of service quality and reliability to show "the ability to safely and reliably generate and otherwise obtain and delivery electricity and provide any other proposed services"
 - Demonstrate the requisite knowledge to operate transmission in the state, or the same of a contract entity hired to perform such services, in a safe and responsible manner
 - Bond or letter of credit for not less than \$40,000 if deemed to be in the public interest (the Commission requires \$100,000)
 - Suppliers must also register with the associated distribution utility and comply with any additional requirements contained therein
- ☐ All applicable federal, state, and local laws, as well as tariff and administrative requirements are conditions of the license

Rescission Period (*pursuant to section F3.1 of Consumers Energy Retail Open Access Service Standards Tariff and section 18.2 of Detroit Edison's Retail Access Service Tariff*)

- ☐ 3 days unconditional right to cancel

Disclosure/Marketing Requirements (*Commission Order U-12487 adopted pursuant to MCL 460.10r(1)*)

- ☐ All applicable federal, state, and local laws and actions of administrative agencies must be followed
- ☐ Must provide when selling, advertising, or marketing power to retail customers:
 - Information in an understandable format to enable customers to compare prices, services, and terms and conditions on a uniform basis
 - Clearly delineate services and conditions of service, including referring customer to utility for information on distribution service
 - Clearly outline pricing policies for prospective customers
 - Prominently display supplier name and contact information on marketing materials
 - Detailed billing requirements (found on pages 6 and 7 of the order)
 - Direct customers who wrongly reach a supplier to the appropriate supplier if known
- ☐ Disclosure of environmental characteristics of the power purchased, including emissions, high-level nuclear waste, and the regional average fuel mix for comparison twice annually in accordance with MCL 460.10r(3)
- ☐ Information which must be provided to new customers before commencing service:
 - Name, address, and account number of customer
 - Name and address of alternative electric supplier
 - Name and address of distribution supplier
 - Clear explanation of the components of service provided by the alternative electric supplier
 - Price for each component using standard terms
 - Demand charge, if applicable, in KW including the method for determining demand
 - Duration of the contract including commencement and termination dates
 - Explanation of termination provisions

- Alternative Electric Supplier must provide 15 days notice of intent to terminate beyond the notice required by the utility tariff which is a minimum of 30 days (this issue is still being addressed in cases before the Commission)
 - Explanation of renewal provisions
 - Itemization and amount of all recurring and non-recurring charges
 - Statement of the alternative electric suppliers policy regarding security deposits
 - Policy regarding termination of service for non-payment of bill
 - Description of the right to rescind the contract
 - Residential customers: 3 days (*pursuant to section F3.1 of Consumers Energy Retail Open Access Service Standards Tariff and section 18.2 of Detroit Edison's Retail Access Service Tariff*)
 - Per contract with all other customers
 - Clear explanation of sign-up bonuses, add-ons, offers, and exclusions if applicable
 - Clean explanation of penalties, fees, and exceptions if applicable
 - A statement that informs a customer to contact the local distribution utility to report a service outage or downed wire.
- Additional requirements specific to residential and small commercial customers:
- Prices must be provided in cents per kilowatt hour or dollars per kilowatt hour
 - Terms used must be guided by the Commission's glossary of terms available on the Commission web site
 - Written disclosure of the cost of electricity at 500 kWh per month and 1,000 kWh per month including customer charges (1,000 kWh and 5,000 kWh for small commercial customers)
 - Provision of environmental characteristics of the suppliers electricity products as outlined in U-12487
 - The following statements:
 - "Electric supply prices and charges for generation services are set by the electric supplier you have chosen."
 - "The Michigan Public Service Commission regulates prices and charges for services related to the distribution of electric service as well as any transition, implementation, and securitization charges."
- Prohibited activities:
- Engaging in unfair, misleading, deceptive, or unconscionable acts, practices, or omissions related to:
 - Marketing, solicitation, sales, contracts, and billing for retail electric services
 - Administration of contracts
 - Provision of services including interactions with customers
 - Communicate to the customer that they are obligated to switch
 - Switch a customer in a manner inconsistent with the slamming and cramming procedures outlined in U-12649
 - Communicate to a customer or the public that the Commission endorses or favors its products or services
- Marketing materials must:
- Use common and consistent terminology guided by the Commission's glossary of terms
 - Provide any educational materials required by the Commission
 - Accurately portray pricing information
 - Indicate that the customer may obtain marketing materials describing services in writing upon request

- Provide written documentation of the authenticity of an advertising claim on demand from a customer or Commission staff, including any aspect of the pricing, fuel source, and place of origin
- Affirmatively indicate whether or not the supplier is affiliated with the customers current generation or distribution provider
- Record Retention:
 - Supplier must maintain records sufficient to show compliance with the standards for not less than 2 years
 - Supplier must provide said records to the Commission or its staff within 5 days of request

Slamming and Cramming Protections (*Commission Order U-12640 adopted pursuant to MCL 460.10a(3)*)

- A proper, verified customer authorization to switch must be obtained including a customer identification or account using:
 - Written authorization
 - Customer call-in voice response unit
 - Electronic authorization through a web site with a secured connection
 - Independent third party oral authorization confirming the agreement with appropriate verification data
 - A three-way call between the customer, former electricity provider, and new supplier in which persuasion of the customer is prohibited
- Customer and former provider must be notified within seven (7) days of the request for change of service request by internet, fax, letter, or telephone call

Penalties

- Fines for failure to comply with disclosure requirements (each action is a separate offense) (*MCL 460.10c(1)*):
 - First offense - \$1,000 - \$20,000
 - Second offense - \$2,000 - \$40,000
 - Third and subsequent offenses - \$5,000 - \$50,000
- Fines for slamming and cramming (each unauthorized action is a separate offense) (*MCL 460.10c(3)*):
 - First offense - \$20,000 - \$30,000
 - Second and subsequent offenses - \$30,000 - \$50,000
 - Second and subsequent knowingly made offenses of slamming and cramming – up to \$70,000
- Refund customer any cost incurred as a result of the unauthorized switch
- Refund to former provider any cost incurred as a result of the unauthorized switch
- Order between 10% and 50% of a fine imposed be paid directly to the customer
- Revoke the supplier's license
- Issue cease and desist orders

HOME SOLICITATION SALES ACT REQUIREMENTS

Licensing Procedure – none

Rescission Period

- Until midnight of the 3rd business day following the day of the agreement (*MCL 445.112(1)*)

Disclosure/Marketing Requirements

- Must follow the do-not-call provisions of the act (*Sections 445.111a – 111e*)
- Defines unfair and deceptive marketing practices as misrepresentation or failure to disclose (*MCL 445.111c*):
 - Total purchase price of the goods
 - Conditions to purchase or use of the goods
 - Any material terms related to the refund, cancellation, or exchange policy
 - Costs or conditions related to a prize
 - Material aspect of an investment opportunity
 - Quality or basic characteristics of a product
 - Right to cancel under the act
 - False or misleading statements to induce customers to pay
 - Charging a customer without proper authorization
 - State that a prize promotion is necessary to obtain the prize
 - Failure to comply with Sections 1a (do-not-call) and 1b (use of live person and caller ID)
- Specific cancellation language required on agreement with a written signature in specific font (*MCL 445.113(1)*)
- Requires provision of a notice of cancellation in duplicate with specific cancellation language in specific font (*MCL 445.113(2)*)

Slamming and Cramming

- No specific slamming or cramming provisions
- Requires a verifiable authorization to be a lawful sale (*445.111c(1)(d)*)
 - Verifiable Authorization means “a written authorization or confirmation, or oral authorization recorded by the telephone solicitor, or confirmation through an independent third party

Penalties

- Up to \$500 fine, 6 months imprisonment, or both for unfair or deceptive marketing practices (outlined above) (*445.111c(2)*)
- Customer may bring action for actual damages or \$250, whichever is greater, plus attorney fees (*445.111c(3)*)
- Refunds or penalties due may be applied to the obligation and used as a defense (*MCL 445.166*)
- No collection rights if not in compliance (*445.117*)

Transactions/Industries Currently Exempted

- *MCL 445.111(a)*
 - Pre-existing revolving charge accounts (*445.111*)
 - Sale pursuant to prior negotiations at a fixed place of sale
 - By an insurance agent licensed by the commissioner of insurance
 - Sale made at a fixed location of business where goods are offered
 - Pursuant to a printed advertisement in a publication of general circulation
 - By a real estate broker or salesperson licensed by the state

- Sale of agricultural or horticultural equipment demonstrated to the consumer at the request of either or both parties
- MCL 445.111(e)
 - Loan, deposit account, or trust account offered by a federally insured depository institution of a subsidiary or affiliate
 - Extension of credit if specified other laws apply
 - Sale of a security or interest in a security subject to the uniform securities act
- 445.111e
 - Organizations subject to the charitable organizations and solicitations act
 - The public safety solicitation act
 - Section 527 groups
- 445.113(5)
 - Telephone sale if sections 505 and 507 of the Michigan Telecommunications Act apply (slamming and cramming provisions)